

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

UNDER SEAL

WITH ONE *EX PARTE* EXHIBIT

IN RE: APPLICATION OF THE UNITED
STATES OF AMERICA FOR ORDER
PURSUANT TO 18 U.S.C. § 2703(d)

Case No. 1:20-DM-00012 (AJT)

GOVERNMENT'S MOTION FOR RECONSIDERATION OF DECEMBER 16, 2020
ORDER GRANTING IN PART AND DENYING IN PART WARNER MEDIA'S
OBJECTIONS TO AND APPEAL FROM MAGISTRATE JUDGE'S DENIAL OF MOTION
TO QUASH OR MODIFY ORDER ISSUED PURSUANT TO 18 U.S.C. § 2703(D)

The United States moves for reconsideration of this Court's Order of December 16, 2020, granting in part and denying in part Warner Media's Objections to and Appeal from Magistrate Judge's Denial of Motion to Quash or Modify Order Issue Pursuant to 18 U.S.C. § 2703(d).

With this motion for reconsideration, we provide the Court - - on an *ex parte* basis - - with an unclassified declaration from the FBI case agent that provides additional information. (Exhibit 1). As the Court will see, the affidavit explains how the Court's December 16th Order, which limits production of non-content information sent and received from the email account Barbara.Starr@turner.com (the "Target Account") to only government and military email addresses, significantly hinders the government's ongoing criminal investigation. With a more complete factual basis before it, we ask the Court to reconsider its ruling, and order Warner Media at least to produce all non-content information sent or received from the Target Account email to all non -"@turner.com" email addresses ("External Emails").¹ While we are not presently requesting the Court to reconsider its denial of the government's access to non-content

¹ By definition, External Emails include all non-content user activity information between the account Barbara.Starr@turner.com and email accounts of individuals not employed

information relating to communications between the Target Account and other “@turner.com” email address (“internal emails”), we nevertheless preserve our right to seek to acquire information concerning those purely internal emails later, as the investigations proceeds; this is consistent with the Court’s December 16, 2020 Order (December 16 Order), which was issued “without prejudice to the Government’s renewal of its broader request based on additional information.” (Exhibit 2).

Background

On September 11, 2020, Warner Media filed a Motion to Quash or Modify Order Issued Pursuant to 18 U.S.C. § 2703(d) (the “Motion to Quash”). The Motion to Quash sought to modify or quash a sealed order issued pursuant to 18 U.S.C. § 2703(d) by U.S. Magistrate Judge Ivan D. Davis (the “Turner Order”) on July 15, 2020. The government filed a response in opposition to the Motion to Quash on September 24, 2020.

On October 7, 2020, Magistrate Judge Buchanan granted Warner Media’s Motion to Quash. On October 9, 2020, the government moved for reconsideration of Judge Buchanan’s October 7th Order. On October 26, 2020, Judge Buchanan granted the government’s motion for reconsideration, and ordered Warner Media to comply with the Turner Order. On November 9, 2020, Warner Media filed its objections and appeal before this Court. On November 30, 2020, the government filed a brief in opposition to Warner Media’s appeal. On December 16, 2020, after hearing arguments from the parties, this Court modified the Turner Order, and ordered Warner Media to produce “non-content information sent or received from the email account Barbara.Starr@turner.com from government or military email addresses.” (Exhibit 2). The

by Warner Media or CNN. Specifically, External Emails includes email chains where at least one person in a message’s address line is not employed by Warner Media or CNN.

December 16 Order was issued “without prejudice to the Government’s renewal of its broader request based on additional information.” *Id.*

Argument

Motions for reconsideration are permitted in both civil and criminal proceedings. *See, e.g., United States v. Hooker*, 200 F.Appx. 237, 2006 WL 2683289 (4th Cir. September 19, 2006), *citing Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir.1998) (accounting for new evidence not available at trial is an appropriate grounds for a motion for reconsideration); *Klapprott v. United States*, 335 U.S. 601, 614-615 (1949) (holding “other reason” clause of Fed. R. Civ. P. 60(b) “vests power in courts adequate to enable them to vacate judgements whenever such action is appropriate to accomplish justice.”); *see also U.S. v. Ibarra*, 502 U.S. 1, 5 (1991) (per curiam) (reaffirming that motions for reconsideration in criminal cases provide district courts with an opportunity to correct their own errors and “prevent[] unnecessary burdens being placed on the court of appeals”).

Whether proceedings under § 2703(d) are civil or criminal in nature, reconsideration is appropriate here because this Court issued its Order of December 16, 2020, “without prejudice to the Government’s renewal of its broader request based on additional information” - - and there is new information, provided through FBI Special Agent Jett’s Third Declaration (*see* Exhibit 1), that supports a different result. The new information bears on the Court’s decision to limit the requested production to data associated with communications between the Target Account and .mil and .gov addresses. Before this Court issued its December 16 Order, no one had suggested that the requested production should be limited in that manner. *See* Exhibit 3, Dec. 16, 2020 Hr’g Tr. 10: 10-14 (Counsel for Warner Media, Paul Wolfson, arguing, “For example, why are the purely internal communications necessary at this juncture? Why can’t the government go

step-by-step and seek the external ones first and then the internal ones as another option?"). The government therefore had not addressed the harm that would be caused to the investigation by imposing such a limitation. Accordingly, based on the new information provided regarding the limitation imposed, as well as this limitation not having been previously sought by Warner Media, the government requests the Court to reconsider its December 16 Order, and order Warner Media to produce all External Emails.

Conclusion

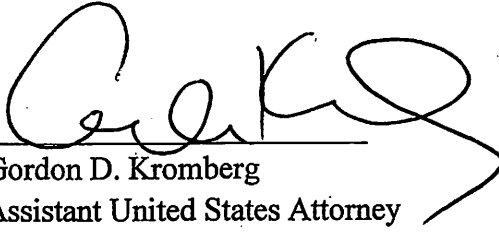
For the foregoing reasons, the government requests that the Court reconsider its Order of December 16, 2020.

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Respectfully submitted,

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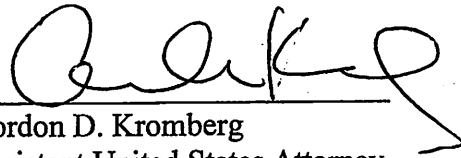


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Certificate of Service

I hereby certify that on January 15, 2021, I transmitted by email the foregoing Motion for Reconsideration of December 16, 2020 Order, granting in part and denying in part Warner Media's Objections to and Appeal from Magistrate Judge's Denial of Motion to Quash or Modify Order Issue Pursuant to 18 U.S.C. § 2703(d), to the following:

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TABLE OF EXHIBITS

1. Exhibit 1: *Ex Parte* Declaration from FBI Special Agent Steve Jett
2. Exhibit 2: Judge Anthony J. Trenga's December 16, 2020 Order
3. Exhibit 3: December 16, 2020 Hearing Transcript